

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JUL 26 2019
Clerk, U.S. Courts
District Of Montana
Missoula Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LARRY WAYNE PRICE, JR., aka L.J.
Price,

Defendant.

CR 18-85-BLG-DLC
CR 18-149-BLG-DLC

ORDER

THIS MATTER comes before the Court on the United States' Unopposed Motion for Interlocutory Sale (Doc. 61) pursuant to Federal Rule of Criminal Procedure 32.2(b)(7). The United States seeks the sale of four lots of real property that are subject to the June 10, 2019 Preliminary Order of Forfeiture (Doc. 60) pursuant to a Stipulation to Deposit Funds between the United States and Three Blind Mice, LLC and Ninety M (Doc. 61-2). The real property subject to the interlocutory sale is more particularly described as follows:

-Lot 1, Block 1, of Price Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said county, under Document No. 3724345, and together with all buildings, improvements, fixtures, easements, and appurtenances thereto;

-Lot 2, Block 1, of Price Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said county, under Document No. 3724345, together with all buildings, improvements, fixtures, easements, and appurtenances thereto;

-Lot 3, Block 1, of Price Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said county, under Document No. 3724345, together with all buildings, improvements, fixtures, easements, and appurtenances thereto;

-Lot 4, Block 1, of Price Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said county, under Document No. 3724345, together with all buildings, improvements, fixtures, easements, and appurtenances thereto

(Doc. 1 at 5.)

This Court's Preliminary Order of Forfeiture provides that Defendant's interest in the real property as it existed at the date of the crimes charged, is forfeited to the United States. (Doc. 60 at 2.) The above described real property is currently titled in the name of Three Blind Mice, LLC by virtue of quit claim deeds executed by Defendant and his wife in April 2018. The above described real property is subject to *lis pendens* filed of record with the Yellowstone County

Clerk and Recorder (Docs. 8; 9; 10; 11) after indictment which included the real property in the forfeiture allegation, and continues to include the real property in the superseding information. Defendant executed and filed a plea agreement which consents to forfeiture. (Doc. 46.) Counsel for Defendant does not object to an interlocutory sale.

Based on the above, IT IS ORDERED:

1. This Court approves the Stipulation and interlocutory sale as required in paragraph 9 of the Stipulation. (Doc. 61-2 at 6.) The parties have agreed to also list Lot 4, which was reserved in the Stipulation for future sale, as set forth in the Motion for Interlocutory sale filed by the United States (Doc. 61 at 2.)
2. The United States' asserts that its interest in the real property vests at the time the defendant commits the crime. *See United States v. Lazarenko*, 476 F.3d 642, 647 (9th Cir. 2007) ("[T]he United States' interest in the property vests at the time the defendant commits the crime."). The currently titled owners of the real property described above dispute this assertion, but agree to the interlocutory sale and set forth their settlement regarding this issue in the Stipulation. (Doc. 61-2 at 2-3.) At an ancillary proceeding to address the final forfeiture for the \$1,700,000 to be deposited into the Court registry as set forth below, third-party claimants may assert claims that they either had a vested or superior right, title, or interest in the

property when the defendant committed the acts giving rise to the forfeiture, or that they are bona fide purchasers for value of the right, title, or interest in the property, and at the time of the purchase were reasonably without cause to believe the property was subject to forfeiture. *Lazarenko*, 476 F.3d at 648; 21 U.S.C. § 853(n).

3. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(7) and Supplemental Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, this Court authorizes an interlocutory sale of the four lots of real property described above through the use of a real estate agent, Dawn Maddux of Engel & Volkers, to increase potential value received upon sale and due to the uniqueness of the property. The listing agreement is for a period of one year. Any renewal of the listing agreement will require approval by the United States and Three Blind Mice, LLC. The renewal will also be shared with Defendant and, if he objects and the parties cannot resolve the realtor, the Court will address the matter at that time.

4. Any executed buy-sell for any of the above described real property will be shared with counsel for the United States, and counsel for Three Blind Mice, LLC. If the parties cannot agree to accept any particular buy-sell or to reject any

such offer, any of the parties or Three Blind Mice, LLC may seek a determination by this Court. A copy of the buy-sell will also be shared with Defendant.

5. The parties agree that any sale shall be closed through use of a title company. Out of the proceeds of the sale of any of the real property set forth above, the proceeds will be applied as follows:

- a) the closing agent will pay closing costs, which includes real estate commission and real property taxes owing to the date of sale;
- b) the agent will apply proceeds to satisfy a Notice of Federal Tax Lien filed on December 13, 2017, with the Yellowstone County Clerk and Recorder for 1040 taxes for tax year 2016 as to Defendant Larry Price Jr. and Amy Price, filed under recording number 3836087, in the original amount of \$1,256,601.25 with accruing penalty and interest, which payoff as of July 31, 2018, was in the amount of \$1,368,960.18, but will include additional accruing penalty and interest to date of closing;
- c) approximately \$1,138,000 will be paid to general and local subcontractors, who have verified unpaid construction work and materials for the structure and improvements to the real

property described above (such known contractors to include Kisling Quality Builders, Montana Ironworks, and Top Line Services);

- d) the sum of \$1,700,000, as proceeds alleged by the United States to be traceable to the above described real property, to be deposited into the Court Registry Investment System pursuant to Local Rule 67.1 and the General Order of this Court dated February 12, 2016, with the United States to release its *lis pendens* filed on the real property described above upon payment to the Clerk of the United States District Court;
- e) any remaining proceeds from the sale of Lots, 1, 2, 3, and 4 above, will be prorated between Three Blind Mice, LLC, and Ninety M, the two victim entities of the scheme charged in the superseding information, in the following ratio: 50% Three Blind Mice and 50% Ninety M. These funds will be credited against any restitution Defendant owes to either entity.

6. Upon deposit into the Court Registry Investment System, the \$1,700,000 will remain on deposit until the Court rules on the final disposition of all or any portion of such funds. All parties to this case and the Stipulation (Doc. 61-2), and

other persons who receive notice under the ancillary proceeding either directly or through publication, who file a claim, will retain their right to pursue any claim to the funds deposited into the Court Registry at an ancillary proceeding, unless there is earlier agreement amongst all parties or claimants to disbursal of the funds, which agreement must be approved by the Court in an ancillary proceeding. In addition, the Defendant, the United States, and the victim entities reserve all rights to assert claims and or defenses to the amounts the Court may set for restitution owed in the above captioned proceeding.

DATED this 26th day of July, 2019.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court